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COUNCIL REGULATION (EC) No 1174/2005

of 18 July 2005

imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of hand pallet trucks and their essential parts originating in the People's Republic of China

(OJ L 189, 21.7.2005, p. 1)

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COUNCIL REGULATION (EC) No 1174/2005

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imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of hand pallet trucks and their essential parts originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([1]) (hereafter the basic Regulation), and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 128/2005 ([2]) (hereafter the provisional Regulation) imposed a provisional anti-dumping duty on imports of hand pallet trucks and their essential parts, i.e. the chassis and hydraulics, of CN codes ex 8427 90 00 and ex 8431 20 00, originating in the People's Republic of China (hereafter PRC).

(2) It is recalled that the investigation of dumping and injury covered the period from 1 April 2003 to 31 March 2004 (hereafter IP). The examination of trends relevant for the injury analysis covered the period from 1 January 2000 to the end of the IP (hereafter period considered).

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of a provisional anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the PRC, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. After the imposition of provisional measures, an on-spot verification visit was carried out at the premises of the importers Jungheinrich AG in Germany and TVH Handling Equipment N.V. in Belgium.

(5) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations, subsequent to this disclosure.

(6) The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
([2]) OJ L 25, 28.1.2005, p. 16.

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C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(7) The product concerned is hand pallet trucks, not self propelled, used for the handling of materials normally placed on pallets, and their essential parts, i.e. chassis and hydraulics, originating in the PRC (hereafter the 'product concerned'), normally declared within CN codes ex 8427 90 00 and ex 8431 20 00.

(8) Some interested parties reiterated their comments, set out in recital (11) of the provisional Regulation, regarding the inclusion of chassis and hydraulics under the scope of the 'product concerned' without, however, providing any additional information or justification. These comments have already been replied to in recitals (12) to (14) of the provisional Regulation. No additional points were raised by the parties concerned to these parts of the provisional Regulation.

(9) They further argued that: (a) chassis and hydraulics, on the one hand, and hand pallet trucks, on the other hand, are different products and that for chassis and hydraulics no dumping and injury assessment was carried out and, therefore, no anti-dumping duty can be imposed; (b) the inclusion of parts without following the procedure of Article 13 of the basic Regulation would unduly penalise assemblers of hand pallet trucks in the Community and (c) chassis and hydraulics are also imported for servicing purposes and the imposition of a duty on chassis and hydraulics would unduly penalise current users.

(10) As regards the argument that chassis and hydraulics are different products than hand pallet trucks and that no dumping and injury assessment was carried out for chassis and hydraulics, it is noted that for the purposes of this investigation all types of hand pallet trucks and their essential parts are considered as one product for the reasons set out in recital (10) of the provisional Regulation, i.e. all types have the same basic physical characteristics and uses. No compelling evidence has been submitted against these findings. As to the argument that no dumping and injury calculation was made for chassis and hydraulics, it is recalled that these essential parts fall within the definition of the 'product concerned', for which dumping and injury to the Community industry of the like product were properly established. With respect to the assessment of dumping in particular, it was found that the imports of chassis and hydraulics during the period of investigation were made in too small quantities to be representative. In consequence, it was considered appropriate to determine the margin of dumping of the 'product concerned', on the basis of hand pallet trucks, for which representative and reliable data were available.

(11) As regards the argument that the inclusion of essential parts could only be pursued via the provisions of Article 13 of the basic Regulation so as to avoid undue difficulties for assemblers of hand pallet trucks in the Community, it is noted that Article 13 is irrelevant when defining the 'product concerned'. Instead, Article 13 of the basic Regulation refers to various circumvention practices, including the assembly of parts which are not falling within the definition of the 'product concerned', an issue not present in this case. Therefore, the argument cannot be accepted.

(12) As regards the argument that chassis and hydraulics are also imported for servicing purposes and the imposition of a duty on chassis and hydraulics would unduly penalise current users, it is noted that no user complained in the course of the investigation that any measures would have such effects. Furthermore, it is noted that the volume of chassis and hydraulics imported from the PRC during the IP is insignificant in relation to the volume of imported Chinese hand pallet trucks. Therefore, the effect on

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servicing old hand pallet trucks, if any, would be minor and the argument cannot be accepted.

(13) In the absence of any other comments, the conclusions on the definition of the 'product concerned' set out in recitals (10) to (15) of the provisional Regulation are hereby confirmed.

2. **Like product**

(14) In the absence of any comments, recitals (16) to (18) of the provisional Regulation concerning the 'like product' are hereby confirmed.

D. **DUMPING**

1. **Market economy treatment (MET)**

(15) Following the imposition of provisional measures, three cooperating exporting producers claimed that they should have been granted MET. Two of them simply reiterated the arguments they had previously submitted and which have already been replied to by the Commission in recitals (19) to (34) of the provisional Regulation.

(16) It is recalled that for one of these two exporting producers, which in fact comprises two related companies, the investigation established that certain assets were booked into the accounts of one of the companies at significantly higher value than the actually paid purchase price. This was found to be in breach of IAS 1 (fair presentation of financial statements) and IAS 16 (measurement at recognition of property plant and equipment). Furthermore, the other company was found in breach of IAS 21 (recording at initial recognition of foreign currency transactions) and IAS 32 (disclosure and presentation of financial instruments). Moreover, the auditors of the companies did not address these issues in the financial accounts, which strengthens the case for finding that the audits were not carried out in line with IAS. No new evidence was provided which could alter the above findings and, therefore, it is hereby confirmed that this exporting producer does not meet the requirements of the second criterion of Article 2(7)(c) of the basic Regulation.

(17) For another exporting producer, the investigation established that a write-off of a loan was not properly booked in the accounts of the company, thus affecting significantly its financial results. This was found to be in breach of IAS 1 (fair presentation of financial statements). Furthermore, the company changed the accounting method concerning bad debt provisions without applying that change retrospectively, thus again affecting significantly the financial results. This was found to be in breach of IAS 8 (changes in accounting policies). The auditor, whilst highlighting the inconsistency even in relation to Chinese accounting standards of the change in the bad debt provision method, didn't give an answer to the problem with the loan. No evidence was provided which could alter the above findings and, therefore, it is hereby also confirmed that this exporting producer does not meet the requirements of the second criterion of Article 2(7)(c) of the basic Regulation.

(18) The third exporting producer which continued requesting MET after the imposition of provisional measures, Zhejiang Noblelift Equipment Joint Stock Co. Ltd, submitted evidence that its practice with regard to recording at initial recognition of foreign currency transactions, although in certain cases not fully formally in line with IAS 21, has not affected its financial results. No other problem of compliance with the IAS was established for the accounts of the company. It was therefore considered appropriate in these circumstances to revise the conclusions concerning the compliance of this exporting producer with the second criterion set out in Article 2(7)(c) of the basic Regulation and

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thus to grant it MET. For the rest, the findings set out in recitals (19) to (34) of the provisional Regulation are hereby confirmed.

(19) It is noted that following the imposition of provisional measures, a non-cooperating Chinese exporting producer and its related importer in the Community submitted certain comments on the provisional findings and claimed MET or, in the event it did not receive MET, individual treatment. The companies were informed that non-cooperating exporting producers, i.e. exporting producers which have not made themselves known, present their views in writing and submit information within the set periods, cannot claim MET or individual treatment in accordance with the provisions of Articles 2(7), 5(10), 9(5) and 18(1) of the basic Regulation.

2. **Individual treatment**

(20) In the absence of any comments, the contents of recitals (35) to (37) of the provisional Regulation concerning individual treatment are hereby confirmed.

3. **Normal value**

3.1. *Determination of normal value for exporting producers not granted MET*

(21) Canada had provisionally been chosen as the analogue market economy third country for the purpose of establishing normal value for exporting producers not granted MET. Following the imposition of provisional measures, two exporting producers and one importer reiterated their arguments against this choice, as set out in recital (41) of the provisional Regulation. However, they did not provide any additional verifiable evidence supporting their arguments.

(22) They further argued that the choice of Canada as an analogue market economy third country was inappropriate because the Canadian manufactures of hand pallet trucks bear much higher costs than Chinese counterparts, in particular in relation to labour costs. In this respect, one exporting producer has claimed an additional adjustment for differences in the cost of production between its own costs in the PRC and the cost of production in Canada, whilst the other exporting producer argued that the very high adjustments already made is an indication that the Canadian and Chinese hand pallet trucks are not comparable.

(23) In this respect, it is recalled that the investigation established that Canada has a competitive and representative market for hand pallet trucks, that the production facilities and methods of the Chinese and the Canadian producers are similar and that overall the Chinese and Canadian hand pallet trucks are comparable on the basis of the criteria established for the purposes of this investigation, as set out in recitals (40), (43) and (44) of the provisional Regulation. Furthermore, the investigation established that the production of hand pallet trucks is not labour intensive (the cost of labour in Canada is not more than 15 % of the total cost of production) and, therefore, any differences in labour cost between Canada and the PRC would not affect significantly the total cost of production. Therefore, the argument that cost differences mainly due to labour render the choice of Canada as an analogue country inappropriate cannot be accepted.

(24) As regards the argument that Canadian manufacturers produce hand pallet trucks at significantly higher costs than Chinese counterparts, and that an adjustment, based on the cost difference between Canada and the exporting producer's own costs in the PRC should be made to the normal value, it should be noted that the production cost information of the exporting producer which made the argument was not accepted since its request for MET

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had been rejected. This significantly undermines the argument on comparison of costs. Consequently, the claim should be rejected.

(25) As to the argument that the high adjustments already granted are an indication that the Canadian and Chinese hand pallet trucks are not comparable, it is noted that the product types to be compared to each other were selected on the basis of criteria which are considered reasonable within the industry concerned. The comparison of product types were made on the basis of certain basic technical characteristics used by all operators in the market and no evidence was provided that this method of comparison was not appropriate, as set out in recital (43) of the provisional Regulation. The argument, therefore, cannot be accepted.

(26) No other arguments were raised concerning the determination of the normal value in the analogue country and thus the findings set out in recitals (38) to (48) of the provisional Regulation are hereby confirmed.

3.2. *Determination of normal value for exporting producers granted MET*

(27) Given that MET was granted to one exporting producer (see recital (18) above) the normal value was established as set out below in accordance with Article 2(1) to 2(6) of the basic Regulation.

3.2.1. Overall representativity of domestic sales

(28) In accordance with Article 2(2) of the basic Regulation, it was first examined whether the domestic sales of hand pallet trucks to independent customers were representative, i.e. whether the total volume of such sales was at least 5 % of the total volume of its corresponding export sales to the Community. This was the case for the exporting producer concerned.

3.2.2. Product type specific representativity

(29) Subsequently, it was examined whether the domestic sales of product types comparable to the exported product types could be considered as representative. For this purpose, the comparable types sold on the domestic market were first identified. The investigation considered those product types of hand pallet trucks sold domestically as being identical or directly comparable with the types sold for export to the Community when they had the same lifting capacity, chassis material, size of forks, type of hydraulics and type of wheels.

(30) Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type sold to independent customers during the IP represented at least 5 % of the total sales volume of the comparable product type exported to the Community. This was the case for some of the product types exported.

3.2.3. Ordinary course of trade test

(31) It was first examined whether the domestic sales of the above product types made by the exporting producer could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(32) This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, not sold at a loss on the domestic market during the IP:

(a) for those product types where more than 80 % by volume of sales on the domestic market were not below unit costs and where the weighted average sales price was equal to or

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higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices during the IP, paid or payable to independent customers, of the type in question irrespective of whether these sales were profitable or not;

(b) for those product types where at least 10 %, but not more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were made at prices equal to or above unit costs only, of the type in question;

(c) for those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade and, therefore, normal value was constructed.

3.2.4. Normal value based on actual domestic price

(33) When the requirements set out in recitals (29) to (31) and in recital (32)(a) and (b) of this Regulation were met, normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of the exporting country during the IP, as set out in Article 2(1) of the basic Regulation.

3.2.5. Normal value based on constructed value

(34) For types falling under recital (32)(c) of this Regulation, as well as for those product types which were not sold in representative quantities on the domestic market, as mentioned in recital (30) of this Regulation, normal value had to be constructed.

(35) The selling, general and administrative (SG&A) expenses incurred and the weighted average profit realised by the exporting producer concerned on domestic sales of the like product, in the ordinary course of trade, during the IP, were added to the manufacturing cost in order to determine constructed normal value pursuant to Article 2(6) of the basic Regulation.

4. **Export price**

(36) Following the imposition of provisional measures, no comments were submitted concerning the determination of the export price for sales made directly to independent customers in the Community. Therefore, the findings set out in recital (49) of the provisional Regulation concerning the establishment of the export price pursuant to Article 2(8) of the basic Regulation are hereby confirmed.

(37) For two exporting producers, the export price has been provisionally constructed for their sales to importers with which they were found to have a compensatory arrangement pursuant to Article 2(9) of the basic Regulation, as set out in recital (49) of the provisional Regulation.

(38) One of the exporting producers and its importer, for which certain export prices were constructed, argued that the relationship between them did not warrant construction of export prices and that the actual prices from the exporting producer to the importer should form the basis for establishing export prices. However, the investigation showed that these export prices were affected by an agreement between the parties, further to which certain product development costs had to be borne by the importer. Due to this compensatory arrangement, average export prices to the importer were significantly higher than to other independent customers in the Community. Therefore, the prices from the exporting

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producer to the importer were not accepted as the basis for establishing the export prices. Furthermore, before the end of the IP the exporting producer and the importer became associated. Normally, in these circumstances, the export prices would be constructed based on resales prices to independent buyers in the Community. However, in this case the number of resale transactions made in the IP was very small and actual transaction prices were not supplied by the importer in good time and they were not verifiable. In these circumstances, these sales were not taken into account in the definitive calculation of export prices.

(39) In fact, this exporting producer had significant direct sales to independent customers in the Community which have been used to establish the export price, as set out in recital (36) of this Regulation.

(40) The other exporting producer for which certain export prices were constructed and the importer concerned submitted comments on the provisional findings arguing that there was no arrangement or agreement between them within the meaning of an association or a compensatory arrangement as set out in Article 2(9) of the basic Regulation and Article 2.3 of the WTO ADA. Therefore, the construction of export prices, using resale prices of the importer to independent customers as a basis, is incorrect.

(41) This argument could not be accepted because the information given by the exporter and the importer was not reconcilable. During the on-spot verification visit at the premises of the exporting producer, the investigators were informed that the reason why export prices between the parties are much higher than normal is that a special arrangement or agreement exists between the exporting producer and the importer. In addition, all export invoices referred for details to this agreement. The exporting producer denied the existence of a written agreement, but explained that the importer concerned was prepared to pay such higher prices in order to obtain and maintain the exclusivity of sales of certain products of the exporting producer for certain markets. The importer also denied the existence of any special relationship and explained during the on-spot verification visit that the prices paid to the exporting producer are higher because of the high quality of the products in question. It is considered that in these circumstances, the export prices were unreliable and have to be adjusted either because of the existence of some form of compensatory arrangement in the light of the provisions of Article 2(9) of the basic Regulation, or for differences in physical characteristics reflecting the alleged higher quality of the products in the light of Article 2(10)(a) of the basic Regulation. However, the claim on quality was not supported by any evidence and was indeed contradicted by the findings of the investigation. In the absence of any other information, the export prices were constructed as set out in recital (49) of the provisional Regulation.

(42) The same exporting producer and the importer also claimed that the calculation of constructed export prices was incorrect because the profit margin used in the calculation was significantly higher than the profit margins used for the same purposes in other cases in the past and, therefore, it was unreasonable. In this respect, it is noted that every case is considered on its own merits and the findings of one investigation cannot be simply transposed to another. In this case, the profit margin used in the calculation was the weighted average of the actual net profits on sales of the 'product concerned' reported by eleven unrelated importers in the course of the investigation. No evidence has been submitted which could challenge these data. Therefore, the claim should be rejected.

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(43) However, it should be noted that following the verification visit at the premises of the importer concerned, the calculation of the constructed export prices has been revised in order to take into account necessary corrections on certain resale prices and the SG&A expenses of the importer.

5. **Comparison**

(44) Following the imposition of provisional measures, one exporting producer requested an adjustment on certain export prices for differences in levels of trade between direct export sales to the Community and sales for export to the Community via traders in the PRC, in accordance with Article 2(10)(d)(i) of the basic Regulation. It argued that export sales via Chinese traders involve further sales to traders, which normally are not necessary in cases of direct exports to the Community. In this respect, it is noted that the abovementioned Article of the basic Regulation provides that an adjustment for differences in levels of trade may be granted where it is demonstrated that consistent and distinct differences exist in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. In this case, the exporting producer claimed and tried to demonstrate the need for an adjustment by reference to the circumstances of its export sales, rather than its domestic sales. This is not a sufficient basis for claiming a level of trade adjustment. Furthermore, the investigation established that all exports of the exporting producer concerned, as well as the domestic sales in the analogue country, were made to traders, i.e. no different levels of trade existed between export price and normal value.

6. **Dumping margins**

(45) In calculating the dumping margin for all other exporting producers, as set out in recital (53) of the provisional Regulation, the exporting producer which was granted MET was no longer taken into account. No other comments were submitted on the findings set out in recitals (52) and (53) of the provisional Regulation which are hereby confirmed. However, for the exporting producer which was granted MET, the dumping margin was established by comparing the weighted average normal value for each type exported to the Community as determined in recitals (28) to (35) of this Regulation to the weighted average export price of the corresponding type, in accordance with Article 2(11) of the basic Regulation. The dumping margins finally determined following the amendments set out above, expressed as a percentage of the net, free-at-Community-frontier price, duty unpaid, are:

Ningbo Liftstar Material Transport Equipment Factory	32,2 %
Ningbo Ruyi Joint Stock Co. Ltd	28,5 %
Ningbo Tailong Machinery Co. Ltd	39,9 %
Zhejiang Noblelift Equipment Joint Stock Co. Ltd	7,6 %
All other companies	46,7 %

E. **COMMUNITY INDUSTRY**

1. **Community production**

(46) In the absence of any comments, the provisional findings concerning the Community production, as set out in recitals (55) and (56) of the provisional Regulation are hereby confirmed.

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2. **Definition of the Community industry**

(47) In the absence of any comments, the provisional findings concerning the definition of the Community industry, as set out in recital (57) of the provisional Regulation are hereby confirmed.

F. **INJURY**

1. **Community consumption**

(48) In the absence of any comments, the provisional findings concerning the Community consumption, as set out in recitals (58) and (59) of the provisional Regulation are hereby confirmed.

2. **Imports of hand pallet trucks from the PRC into the Community**

(49) In the absence of any comments, the provisional findings concerning imports of hand pallet trucks from the PRC into the Community, as set out in recitals (60) to (64) of the provisional Regulation are hereby confirmed.

3. **Situation of the Community industry**

(50) Following the imposition of the provisional measures, one exporting producer questioned the injurious situation of the Community industry by pointing out that the production capacity of the Community industry has increased during the period considered, the development of stocks after 2001 cannot be regarded as a sign of injury but a sign of improvement of the Community industry, the sales price of the hand pallet trucks sold by the Community producers and their market share remained stable in 2003 and during the IP, the profitability of the Community industry increased between 2000 and 2001, the level of investments of the Community industry has more than doubled indicating that it had no problem to raise capital and the stability of wages must be perceived as a positive indicator.

(51) As regards the argument that the production capacity of the Community industry has increased and this does not indicate injury, it should be noted that whilst the overall increase of production capacity during the period considered was 3 %, it decreased by almost 2 % between 2002 and the IP. In fact, the production capacity increased only in the years 2001 and 2002 when investments were made. This development cannot be considered as indicating the absence of injury to the Community industry, in particular when the consumption increased by 17 % during the same period.

(52) As regards the argument that the development of stocks after 2001 cannot be regarded as a sign of injury but a sign of improvement of the Community industry, it should be noted that in addition to the explanation provided in recital (67) of the provisional Regulation as to why this factor is not regarded as a particularly relevant indicator of the economic situation of the Community industry, it should be recalled that stocks increased overall by 14 % during the period considered. The fact that there was a peak in 2001 does not alter the finding that stocks may have at least contributed to the injurious situation of the Community industry.

(53) As regards the argument that the sales price and the market share of the hand pallet trucks sold by the Community producers remained stable in 2003 and during the IP, it should be noted that the IP includes nine months of 2003. It should be noted that the injury analysis covers a period of several years and that both the market share and the sales price of the Community industry declined significantly during the period considered. This has not been challenged.

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(54) As regards the argument that the increase in the profitability of the Community industry between 2000 and 2001 does not indicate injury, it should be noted that the profitability increased marginally from 0,28 % in 2000 to 0,51 % in 2001 and then decreased constantly to reach – 2,31 % during the IP. This is a clear indicator of injury.

(55) As regards the argument that the level of investments of the Community industry has more than doubled and thus it had no problem to raise capital, it is recalled, as explained in recital (76) of the provisional Regulation, that major investments were made in 2001 and 2002 to replace worn-out production facilities in order to allow the Community industry to remain competitive. Investments dropped by 40 % between 2002 and the IP, in parallel with the worsening profitability and this indicated problems in raising capital. This again clearly indicates a state of injury.

(56) As regards the argument that the stability of wages must be perceived as a positive indicator, it should be noted that this factor should be analysed in the context of development of wages and employment. The impairment of the industry can be clearly seen in the reduction of number of employees. The fact that the Community producers could not increase wages in line with inflation during the period considered due to unfair competition must be considered a negative indicator.

(57) The arguments of this exporting producer analysed in recitals (50) to (56) of this Regulation should, therefore, be rejected.

(58) Certain importers argued that the Community industry has offered hand pallet trucks for sale at prices much lower than any Chinese-made hand pallet trucks and this indicates that it is not being injured. This argument is not supported by the finding of significant price undercutting of over 55 % as set out in recital (64) of the provisional Regulation and, therefore, cannot be accepted.

(59) In the absence of any other comments, the provisional findings concerning the situation of the Community industry, as set out in recitals (65) to (84) of the provisional Regulation are hereby confirmed.

4. **Conclusion on injury**

(60) In conclusion, as already set out in the provisional Regulation, all relevant injury indicators showed negative trends. In the absence of any other comments, the provisional findings concerning the conclusion on injury set out in recitals (85) to (87) of the provisional Regulation are hereby confirmed.

G. **CAUSATION OF INJURY**

1. **Introduction**

(61) In the absence of any comment concerning the introduction on causation of injury, as set out in recital (88) of the provisional Regulation, the statement is hereby confirmed.

2. **Effect of the dumped imports**

(62) One exporting producer and certain importers alleged that the use of Eurostat import data are inappropriate in determining the volume and market share of imports of the product concerned since there is no separate CN code for it. They argued that other products are also covered by the two CN codes in question, one covering the complete product and the other parts, and thus such Eurostat data cannot give an accurate picture of the effect of the dumped imports. It is noted that no evidence has been submitted indicating that any significant quantities of other products may have been classified under the CN code 8427 90 00, which covers

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the complete product and which was used to determine the dumped imports volume. In fact, the same interested parties used Eurostat import data from the same CN code to substantiate their claim concerning the trends of imports of hand pallet trucks from other third countries. It is also considered, that given the narrow definition of the CN code, the vast majority of products entering the Community under this heading are imports of the product concerned. As to other CN code 8431 20 00 covering parts for use solely or principally with the machinery of heading 8427, it is noted that the imports reported by Eurostat for this code are small and have not been taken into account when establishing the volume and the market share of the imports of the product concerned. Therefore, the argument cannot be accepted.

(63) In the absence of any other comment, the provisional findings concerning the effect of the dumped imports, set out in recitals (89) to (91) of the provisional Regulation are hereby confirmed.

3. **The effects of other factors**

(a) *The export performance of the Community industry*

(64) Following the imposition of provisional measures, one exporting producer argued that the export performance of the Community industry had been wrongly evaluated. Export sales were found to have fallen by nearly 50 % between 2000 and the IP, having a significant impact on the Community industry's performance. It should be noted that even if the exports have declined in absolute terms, they represented on average only 11 % of the total sales of the Community industry during the period considered. Furthermore, whilst sales in the Community were loss making, exports were still earning some profits during the IP. Therefore, the decline of the exports cannot be considered as a factor causing any significant injury to the Community industry. Consequently, the argument should be rejected and the findings set out in recitals (92) and (93) of the provisional Regulation confirmed.

(b) *Investments of the Community industry*

(65) In the absence of any comment, the provisional findings concerning the investments of the Community industry, as set out in recital (94) of the provisional Regulation are hereby confirmed.

(c) *Imports from other third countries*

(66) Two exporting producers and certain importers claimed that contrary to the findings in recital (95) of the provisional Regulation, countries other than the PRC, in particular Brazil and India, have taken advantage of the strength of the euro in order to significantly increase their sales on the Community market. Given the fact that imports from third countries, such as Brazil and India, represent only approximately 1 % of the Chinese imports of the product concerned, their impact on causality, if any, can be considered insignificant. The claim should, therefore, be rejected.

(67) In the absence of any other comment, the provisional findings concerning imports from other third countries as set out in recitals (95) and (96) of the provisional Regulation are hereby confirmed.

(d) *Euro/US dollar exchange rate*

(68) One exporting producer and certain importers claimed that a share of the price undercutting established is attributable to the weakness of the US dollar against the euro and not to dumped import prices. However, these parties have not submitted any evidence indicating the volume of imports from the PRC invoiced in US dollar, which could allow an overall assessment

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of any impact of exchange rates on prices. In any event, even if all imports from the PRC had been made in US dollar, something which cannot be supported by the findings of the investigation, import prices of the product concerned should have dropped by 25 % (loss of US dollar value against the euro) instead of 34 % experienced during the period considered. Finally, it should be noted that with the exception of two individual cases with clearly negligible import volumes, imports from all countries other than the PRC, taken together, which also benefited from the appreciation of the euro, decreased. This indicates that currency fluctuations cannot have been a substantial cause of the surge of dumped imports from the PRC. The claim should therefore be rejected and the findings set out in recital (98) of the provisional Regulation confirmed.

(e) *Selling behaviour*

(69) One exporting producer and certain importers reiterated their argument that the complainants are large companies active in the material handling sector, for which hand pallet trucks are only an accessory product, often used as a selling tool for bigger, more expensive products. Since no new evidence has been submitted, the findings set out in recitals (99) and (100) of the provisional Regulation are hereby confirmed and the claim rejected.

(f) *Strategic mistakes made by the EC producers, such as a low quality products and production of own parts*

(70) One exporting producer reiterated the claim that Community producers suffered self-inflicted injury by focusing on the production of low quality products and outsourcing the production of parts. However, no new evidence was submitted in support of this claim. It is noted that this claim has already been examined and explicitly addressed in recitals (101) to (103) of the provisional Regulation, which are hereby confirmed.

4. **Conclusion on causation**

(71) In the absence of any other comments which could alter the provisional determination, the conclusion on causation as set out in recitals (104) and (105) of the provisional Regulation is hereby confirmed.

H. **COMMUNITY INTEREST**

1. **General remarks**

(72) In the absence of any comment, the general remarks on Community interest as set out in recital (106) of the provisional Regulation are hereby confirmed.

2. **Interest of Community industry**

(73) Following the imposition of provisional measures, one importer claimed that previously closed production plants in the Community will not be reopened, thus will not offer new employment opportunities because of the imposition of anti-dumping measures. Firstly, the claim was not supported by any evidence. Secondly, even if no closed plants were to reopen, it must be noted that the Community industry's capacity utilisation during the IP was only 46 %. This is a clear indication of the potential for increase in production and sales of the Community industry should fair competition prevail in the Community market. The claim, therefore, should be rejected.

(74) One exporting producer and certain importers argued that the hand pallet activities of the Community industry in particular in terms of employment is negligible in relation to their total activities and, therefore, their interest in such measures is limited when compared to that of other operators in the market.

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First of all it is recalled that exporting producers have no standing to bring claims regarding the examination of the interest of the Community industry. The same applies with regard to the interest of suppliers, traders or users examined below. The arguments brought were nevertheless examined. In this respect, it is recalled that the Community industry employed for hand pallet trucks some 434 people during the IP, whilst, for example, the cooperating importers employed around 74. It is further noted that certain Community producers rely almost exclusively on production and sales of hand pallet trucks. Therefore, this argument cannot be accepted.

(75) In the absence of any other comment, the provisional findings concerning the interest of the Community industry, as set out in recitals (107) to (109) of the provisional Regulation, are hereby confirmed.

3. **Interest of Community suppliers**

(76) One exporting producer alleged that the lack of any representation from Community suppliers is an indication that imports from the PRC did not negatively affect their business. This allegation cannot be accepted. The Community industry relies on Community suppliers for certain parts of hand pallet trucks, and it is not reasonable to assume that there are no negative effects on their business. Further closures of Community plants could further affect their business. In the absence of any new comments, the provisional finding concerning the interest of Community suppliers, as set out in recital (110) of the provisional Regulation, is hereby confirmed.

4. **Interest of unrelated importers/traders**

(77) One exporting producer claimed that the investigation ignored the interests of small importers, which mostly focus their activities on hand pallet trucks. It should be noted that submissions from importers, which made themselves known in due time and provided sufficient information, were fully taken into account in this investigation. Among the cooperating unrelated importers were companies with two and three employees. Furthermore, it is noted that the cooperating importers reported a very good profitability on their hand pallet trucks business (net profits of up to 50 % on turnover). Therefore, it is reasonable to consider that the impact on their business of the imposition of the anti-dumping measures will be relatively small. Consequently, the claim should be rejected and the findings set out in recitals (111) to (114) of the provisional Regulation confirmed.

5. **Interest of users**

(78) Two exporting producers and certain importers claimed that the increase in the price of Chinese hand pallet trucks following the imposition of measures is having an immediate and disproportionate effect on hundreds of thousands of shops, stores and factories using hand pallet trucks in the Community. However, it is noted that no such Community user of hand pallet trucks has submitted any comments on the findings set out in the provisional Regulation. Since this claim has not been supported by any evidence, it should be rejected.

(79) In the absence of any other comment, the provisional findings concerning the interest of Community users, as set out in recitals (115) and (116) of the provisional Regulation, are hereby confirmed.

6. **Conclusion on Community interest**

(80) Following the above, the conclusions on Community interest drawn in recitals (117) to (119) of the provisional Regulation are hereby confirmed.

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I. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

(81) In the absence of any substantiated comments, the methodology used for establishing the injury elimination level, as described in recitals (120) to (123) of the provisional Regulation is hereby confirmed.

(82) Based on this methodology, an injury elimination level has been calculated for the purposes of establishing the level of measures to be definitely imposed.

2. Form and level of the duty

(83) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since for all the exporting producers concerned the injury elimination level was found to be higher than the dumping margins.

(84) On the basis of the above, the definitive duty rates are as follows:

Company	Duty rate
Ningbo Liftstar Material Transport Equipment Factory	32,2 %
Ningbo Ruyi Joint Stock Co. Ltd	28,5 %
Ningbo Tailong Machinery Co. Ltd	39,9 %
Zhejiang Noblelift Equipment Joint Stock Co. Ltd	7,6 %
All other companies	46,7 %

(85) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(86) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

3. Collection of provisional duty

(87) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation be collected definitively to the extent of the amount of the duty definitively imposed by the present Regu-

[1] European Commission, Directorate-General for Trade, Directorate B, J-79 5/17, Rue de la Loi/Wetstraat 200, B-1049 Brussels.

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lation. Where the definitive duty is higher than the provisional duty, only the amounts secured at the level of the provisional duty should be collected definitively.

4. **Undertakings**

(88) Subsequent to the imposition of provisional anti-dumping measures, two exporting producers expressed their willingness to offer undertakings in accordance with Article 8 of the basic Regulation. The possibility of contractive remedies in the form of price undertakings has been explored. However, it is noted that one of these exporting producers has not cooperated with the investigation and, therefore, since no MET or individual treatment was granted to it, as set out in recital (19) of this Regulation, no minimum prices could be established. Furthermore, it was found that the 'product concerned' exists in hundreds of types, that are regularly upgraded or otherwise modified. In addition, the exporting producers were also selling either directly or via their affiliated importers other products to the same customers. In such circumstances, the monitoring of price undertakings would be virtually impossible. It was therefore considered that the acceptance of undertakings was impractical in this particular case and the offers had to be rejected. The exporting producers were informed accordingly and given an opportunity to comment. Their comments have not altered the above conclusion,

HAS ADOPTED THIS REGULATION:

Article 1

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1. A definitive anti-dumping duty is hereby imposed on imports of hand pallet trucks and their essential parts, i.e. chassis and hydraulics, falling within CN code ex 8427 90 00 and ex 8431 20 00 (TARIC codes 8427 90 00 10 and 8431 20 00 10), originating in the People's Republic of China. For the purpose of this Regulation, hand pallet trucks shall be trucks with wheels supporting lifting fork arms for handling pallets, designed to be manually pushed, pulled and steered, on smooth, level, hard surfaces, by a pedestrian operator using an articulated tiller. The hand pallet trucks are only designed to raise a load, by pumping the tiller, to a height sufficient for transporting and do not have any other additional functions or uses such as for example (i) to move and to lift the loads in order to place them higher or assist in storage of loads (highlifters), (ii) to stack one pallet above the other (stackers), (iii) to lift the load to a working level (scissorlifts) or (iv) to lift and to weigh the loads (weighing trucks).

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2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community frontier price, before duty, shall be as follows:

The People's Republic of China	Rate of duty (%)	TARIC additional code
Ningbo Liftstar Material Transport Equipment Factory, Zhouyi Village, Zhanqi Town, Yin Zhou District, Ningbo City, Zhejiang Province, 315144, PRC	32,2	A600
Ningbo Ruyi Joint Stock Co. Ltd, 656 North Taoyuan Road, Ninghai, Zhejiang Province, 315600, PRC	28,5	A601
Ningbo Tailong Machinery Co. Ltd, Economic Developing Zone, Ninghai, Ningbo City, Zhejiang Province, 315600, PRC	39,9	A602

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The People's Republic of China	Rate of duty (%)	TARIC additional code
Zhejiang Noblelift Equipment Joint Stock Co. Ltd, 58, Jing Yi Road, Economy Development Zone, Changxin, Zhejiang Province, 313100, PRC	7,6	A603
All other companies	46,7	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation No 128/2005 on imports of hand pallet trucks and their essential parts falling within CN codes ex 8427 90 00 and ex 8431 20 00 (TARIC codes 8427 90 00 10 and 8431 20 00 10) originating in the People's Republic of China shall be definitively collected, in accordance with the rules set out below. The amounts secured in excess of the amount of the definitive anti-dumping duty shall be released. Where the definitive duty is higher than the provisional duty, only the amounts secured at the level of the provisional duty shall be definitively collected.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.